

E-Filed 8/19/11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROBERT I. MASK,
Petitioner,

No. C 10-2535 RS (PR)

ORDER OF DISMISSAL

v.

A. HEDGPETH,
Respondent.

INTRODUCTION

This is a federal habeas corpus action filed by a *pro se* state prisoner pursuant to 28 U.S.C. § 2254. Defendants move to dismiss the action as moot, petitioner having been released on parole. For the reasons stated herein, respondent's motion is GRANTED, and the action is DISMISSED.

BACKGROUND

According to the petition, petitioner, formerly an inmate at Salinas Valley State Prison, received an unconstitutional disciplinary hearing and punishment from respondent in 2009. Petitioner alleges that his right to due process was violated when (1) he was denied his right to call witnesses at his disciplinary hearing; (2) there was insufficient evidence to

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1 support a finding of guilt; (3) he was assessed 120 days of lost credit, when the maximum
2 loss credit for such an offense was 30 days.

3 DISCUSSION

4 Article III, § 2, of the Constitution requires the existence of a “case” or “controversy”
5 through all stages of federal judicial proceedings. This means that, throughout the litigation,
6 the plaintiff “must have suffered, or be threatened with, an actual injury traceable to the
7 defendant and likely to be redressed by a favorable judicial decision.” *Lewis v. Continental*
8 *Bank Corp.*, 494 U.S. 472, 477 (1990). A case becomes moot “when the parties lack a
9 legally cognizable interest in the outcome.” *Johnson v. Rancho Santiago Comm. Coll. Dist.*,
10 623 F.3d 1011, 1020 (9th Cir. 2010) (citations omitted). “[A] dispute solely about the
11 meaning of a law, abstracted from any concrete actual or threatened harm, falls outside the
12 scope of the constitutional words ‘Cases’ and ‘Controversies’.” *Alvarez v. Smith*, 130 S. Ct.
13 576, 580–81 (2009) (citations omitted).

14 An incarcerated convict’s (or a parolee’s) challenge to the validity of his conviction
15 satisfies the case-or-controversy requirement, because the incarceration (or the restrictions
16 imposed by the terms of the parole) constitutes a concrete injury, caused by the conviction
17 and redressable by the invalidation of the conviction. *Spencer v. Kemna*, 523 U.S. 1, 7
18 (1998). Once the convict’s sentence has expired, however, some concrete and continuing
19 injury other than the now-ended incarceration or parole — some “collateral consequence” of
20 the conviction — must exist if the suit is to be maintained and not considered moot. *Id.*
21 Continuing collateral consequences may be either proven or presumed. *Id.* at 8.

22 The presumption of collateral consequences that is applied to criminal convictions
23 does not extend to prison disciplinary proceedings. *Wilson v. Terhune*, 319 F.3d 477, 481
24 (9th Cir. 2003). A prisoner seeking to challenge prison disciplinary proceedings in habeas
25 must demonstrate that continuing collateral consequences exist if the punishment imposed as
26 a result of the disciplinary action has expired. *See id.* Allegations that a rules violation
27 finding will affect classification, institutional and housing assignments, privileges, and may
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1 result in a delay or denial of parole, involve discretionary decisions too speculative to
2 constitute sufficient proof of collateral consequences. *See id.* at 481–82.

3 The petition must be dismissed as moot. This Court may entertain a petition for writ
4 of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court
5 only on the ground that he is in custody in violation of the Constitution or laws or treaties of
6 the United States.” 28 U.S.C. § 2254(a). As petitioner has been released from incarceration,
7 there must be some presumed or proven concrete and continuing injury, a collateral
8 consequence resulting from the prison disciplinary proceeding, to prevent the action from
9 being considered moot. As stated above, the presumption of collateral consequences does
10 not extend to prison disciplinary proceedings. Consequently, it falls to petitioner to prove
11 that some case or controversy exists. This he has failed to do, having not opposed the
12 motion. Accordingly, respondent’s motion to dismiss (Docket No. 9) is GRANTED, there
13 being no case or controversy to satisfy Article III requirements. The action is hereby
14 DISMISSED. The Clerk shall terminate Docket No. 9, enter judgment in favor of
15 respondent, and close the file.

16 **IT IS SO ORDERED.**

17 DATED: August 19, 2011

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19 RICHARD SEEBORG
20 United States District Judge
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